

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Doug Mink,)	
)	
Complainant,)	
)	
v.)	Case No. 19-1305-EL-CSS
)	
Duke Energy Ohio, Inc.)	
)	
Respondent.)	
)	
)	

POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

The Complainant in this case objects to practices permitted by the Public Utilities Commission of Ohio (Commission) -approved tariff and makes conclusory allegations of overbilling. At this point, after a formal hearing on September 19, 2019, the evidentiary record readily confirms that the complainant has failed to sustain his burden of proof to demonstrate that Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) violated any Ohio law or regulation, or violated its tariff. Accordingly, the Commission should find in favor of the Company and dismiss the complaint with prejudice.

II. DISCUSSION

A. Statement of Facts

Mr. Doug Mink, the Complainant in this case, has received electric service from Duke Energy Ohio at the address of 11034 Woodward Lane, Cincinnati, Ohio 45241 for a number of years, but his complaint concerns his billings from January 2017 and onward.¹

It is undisputed that, after Duke Energy Ohio began to implement advanced metering, Mr. Mink declined installation of an advanced meter, and opted instead to retain his traditional meter.² Accordingly, since October 2016, Complainant has been charged a \$30.00 per month Smart Meter Opt Out fee, pursuant to the Company's tariff.³

For customers, like Complainant, who have opted out of the advanced meters and elected to retain traditional meters, the Company sends a meter reader to attempt to obtain a meter read every single month. The Company is required to obtain at least one actual meter reading per year. In between actual meter readings, the Company bills traditional-meter customers based on estimated meter readings, as permitted by its tariff.⁴

As it relates to the bills Complainant disputes in this case, the Company has been able to obtain only three actual meter readings:⁵

- September 19, 2017
- December 11, 2018
- August 7, 2019

¹ Hearing Tr., pp. 82-83.

² See Compl., p. 2 ("Plaintiff opted out of the Smart Meter.").

³ Duke Energy Ohio Exhibit 1A, Direct Testimony of Alicia Jones, Confidential, p. 6 (Jones Testimony); *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Advanced Meter Opt-Out Service Tariff*, Case Nos. 14-1160-EL-UNC, 14-1161-EL-AAM, Opinion and Order (Apr. 27, 2016) (approving the Company's \$30.00/month opt-out fee).

⁴ Jones Testimony, pp. 7-8; Schedule of Rates, Classifications Rules and Regulations for Retail Electric Service of Duke Energy Ohio, P.U.C.O. No. 19, Sheet No. 25.6, p.1 ("Where the Company is unable to obtain a meter reading, estimated bills, so identified, will be rendered for an estimated amount to permit normal monthly payment.").

⁵ Jones Testimony, pp. 11-12, 13.

This is because the traditional meter at Complainant's service address is located indoors and, as Complainant acknowledged, the premises are normally kept locked.⁶

Because of the Company's meter readers' inability to access his meter, Complainant received initial bills based on estimated meter readings during the following intervals:

- January 2016 through August 2017;
- October 2017; and
- August 2018 through July 2019.

However, all of these bills were subsequently recalculated based on a later actual meter reading.⁷

B. Procedural History

On March 11, 2019, Complainant filed an informal complaint with the Public Utilities Commission of Ohio - Office of Consumer Affairs, alleging unfair billing practices in regard to his estimated meter usage.⁸ On June 11, 2019 he filed a formal complaint with the Commission, initiating the instant case (Complaint).

Although Complainant's allegations are challenging to decipher, he appears to allege that:

- a "grandfather clause" entitles him to retain his traditional electric meter without paying the \$30 monthly opt-out fee required by the Company's tariff;⁹
- calling in his own meter readings entitles him to avoid the \$30 monthly opt-out fee;¹⁰
- the Company was wrong to bill him according to estimated meter readings during periods when he alleges he was calling in meter readings;¹¹

⁶ Hearing Tr., p. 91; *see also* Jones Testimony, pp. 9-10.

⁷ Jones Testimony, p.8.

⁸ *See* Compl. Attachment, pp. 6-7.

⁹ Compl., p. 2 ("Plaintiff is under the grandfather clause as Duke did not start the Smart Meter Program until after Plaintiff was already an existing customer before the program began.").

¹⁰ Compl., p.2 ("Plaintiff also should not be charged the \$30,00 fee as he calls in his meter readings each month excluding the once a year read by Duke.").

¹¹ Compl., p. 2 ("[U]pon giving the readings I still most always get an estimated bill.").

- after taking actual meter readings, the Company “input[] wrong numbers in the system”¹²;
- after taking actual meter readings in September 2017 and December 2018, the Company incorrectly re-billed his usage and continues to over-bill him up to and including the date of his formal complaint.

A formal hearing on the complaint occurred on September 19, 2019. At the evidentiary hearing, Complainant clarified that his billing dispute in this case is limited to billings for January 2017 and onward.¹³

C. Argument

It is well settled that the burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Utils. Comm.* (1966), 5 Ohio St.2d 189, 34 O.O.2d 347, 214 N.E.2d 666. “Therefore, it is the responsibility of a complainant . . . to present evidence in support of the allegations made in [his] complaint.”¹⁴

1. Complainant is required to pay the \$30 monthly opt-out fee mandated by the tariff as long as he retains his traditional meter.

The monthly \$30.00 fee to which Complainant objects has been vetted and approved by the Commission.¹⁵ The Company’s tariff contains an optional “RIDER AMO,” which applies to “residential customers . . . who request a traditional meter rather than an advanced meter,” and requires such customers to pay “a recurring monthly fee of \$30.00.”¹⁶ The Commission has

¹² Compl., p. 2.

¹³ Hearing Tr., pp. 82-83.

¹⁴ *Daniels v. Ohio Power Company*, Case No. 15-1287-EL-CSS, Opinion and Order, p. 4 (Aug. 31, 2016).

¹⁵ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of a Grid Modernization Opt-Out Tariff and for a Change in Accounting Procedures Including a Cost Recovery Mechanism*, Case No. 14-1160-EL-UNC, Opinion and Order (April 27, 2016).

¹⁶ Schedule of Rates, Classifications Rules and Regulations for Retail Electric Service of Duke Energy Ohio, P.U.C.O. No. 19, Sheet No. 127, p.1.

approved this rider, and ultimately denied the only request for rehearing.¹⁷ Complainant does not dispute that he has opted to retain a traditional meter. Therefore, he is subject to the monthly fee. He has offered no basis for waiving this obligation for his account.

First, the fact that Complainant first became a Duke Energy Ohio customer prior to the Commission's approval of Rider AMO does not excuse him from paying the \$30.00 monthly fee as long as he continues to opt out of advanced metering. Complainant was unable to identify any supporting authority for his argument that he should be excused from the fee under a "grandfather clause."¹⁸ There is no such status. Once the tariff was approved by the Commission, it applied to all customers. Complainant's sole discernible argument is that the Company acted wrongly in "changing what [he is] forced to do" after he had already established a customer relationship.¹⁹ Such an argument runs contrary to the entire practice of prospective rate-making, that "the [C]ommission has the power to invalidate a rate schedule and fix new rates."²⁰

Second, calling in meter reads on his own does not entitle Complainant to be excused from the \$30.00 monthly opt-out fee. Nothing in Ohio law, regulations, or in the Company's tariff provides for waiving this fee for customers "who request a traditional meter." Likewise, the Commission's decision approving Rider AMO does not give any indication that the Commission contemplated such an exemption. The Company may not offer Complainant service on unjustly preferential terms, *i.e.* terms different from those in the tariff, which it offers to all of its other customers.²¹

¹⁷ See *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of a Grid Modernization Opt-Out Tariff and for a Change in Accounting Procedures*, Case No.14-1160-EL-UNC, Opinion and Order (April 27, 2016); *Id.*, Entry on Rehearing (Feb, 1, 2017) (denying rehearing).

¹⁸ Hearing Tr., pp. 88-90; 97-98.

¹⁹ Hearing Tr., pp. 97-98.

²⁰ *In re Fuel Adjustment Clauses for Columbus S. Power Co.*, 140 Ohio St.3d 352, 2014-Ohio-3764, 18 N.E.3d 1157, ¶ 28.

²¹ See R.C. 4905.26 (permitting complaints regarding "unjustly preferential" and "unjustly discriminatory" service).

2. The Company has acted in accordance with all applicable laws and regulations, as well as its tariff, in metering and billing Complainant's electric usage.

Complainant does not challenge the accuracy of his meter and has not requested for his meter to be tested for accuracy.²² Rather, he believes that the Company has (1) wrongly refused to accept his called-in meter readings as actual meter readings; (2) mis-recorded its actual meter readings; and (3) miscalculated his bill after obtaining actual meter readings. Insofar as Complainant attempts to substantiate his allegations, he offers two contentions: (1) his billed usage recently increased to a “hyper inflated 2000 to 5000 kWh’s” per month;²³ and (2) the meter readings he received on the two bills immediately following two actual meter readings contained numbers that differed from the actual meter readings recorded by the Company’s meter reader.²⁴ Neither supports Complainant’s allegation that he has been improperly billed or that his current balance is improperly calculated.

Regarding Complainant’s first contention, his current balance—based on an actual meter reading that he only permitted the Company to obtain after this proceeding had commenced—reflects usage of well under the 2000 to 5000 kWh per month cited in his complaint.²⁵ Complainant’s initial bills (received before he filed his Complaint) were estimated due to the Company’s inability to access his meter.²⁶ The estimates did indeed turn out to be higher than Complainant’s actual usage, but (1) inaccurate estimates do not constitute a regulatory or tariff violation; and (2) the Company obtained an actual meter reading as soon as Complainant permitted it to do so and adjusted the bill accordingly immediately thereafter.²⁷ This is in accordance with

²² See Compl., pp. 1-2; Hearing Tr. 96 (confirming that he has not requested the meter to be tested).

²³ Compl., p. 2.

²⁴ See Jones Testimony, pp. 11-12.

²⁵ *Id.*, pp. 13-14.

²⁶ *Id.*, pp. 9-10, 13.

²⁷ *Id.*, p. 14.

Ohio laws and regulations—as the Commission itself has observed, “any overbilling that is a result of estimated usage eventually is balanced out with an actual reading.”²⁸ Thus, the Company has not engaged in any inflation of Complainant’s usage, “hyper” or otherwise. Moreover, as Complainant does not live at the premises in question, Complainant would not have any direct knowledge of usage changes.²⁹ Estimating usage is provided for by the Company’s tariff³⁰ and there is no basis for requiring the Company to accept called-in customer reads in lieu of estimates.

As for the supposed discrepancy perceived by Complainant between actual meter readings and the meter readings on the following bills, he merely misunderstood how the Company prorates usage across billing cycles. As the Company’s witness, Ms. Alicia Jones explained, when an actual meter reading is taken between billing dates, the Company uses that most recent actual meter reading and the previous meter reading to generate prorated meter readings for the billing dates in between the two actual meter readings. Thus, the readings that appear on the bills immediately before or after such a mid-cycle actual reading are prorated for the billing dates and will not be equal to the actual meter reading which occurred between billing dates.³¹ There is no discrepancy—the readings simply give the usage for different dates.

III. CONCLUSION

As previously explained by the Commission, “Complainant has the burden of proving [his] complaint, including that [he] suffered some injury, in this proceeding.”³² As has been established by a reading of the complaint in this proceeding along with all of the record that was created,

²⁸ *Nicholson, v. The East Ohio Gas Company*, Case No. 09-78-GA-CSS, Opinion and Order, p. 6 (Sept. 30, 2009).

²⁹ *See* Hearing Tr., pp. 79-81.

³⁰ Schedule of Rates, Classifications Rules and Regulations for Retail Electric Service of Duke Energy Ohio, P.U.C.O. No. 19, Sheet No. 25.6, p.1 (“Where the Company is unable to obtain a meter reading, estimated bills, so identified, will be rendered for an estimated amount to permit normal monthly payment.”).

³¹ *See* Jones Testimony, pp. 11-12.

³² *Wingo v. Nationwide Energy Partners, LLC*, Case No. 16-2401-EL-CSS, Finding and Order, p. 8 (November 21, 2017) (citations omitted).

Complainant is utterly unable to set forth any basis upon which the Commission may make a finding that any of Duke Energy Ohio's rates, practices or services with regard to Complainant's account have been unreasonable or unlawful. For the reasons set forth above, Duke Energy Ohio respectfully requests that the Commission dismiss this complaint with prejudice.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail on this 23rd day of October 2019, to the following parties.

/s/ Larisa M. Vaysman
Larisa M. Vaysman

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